



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Agreement with McCaw Communications of Stockton, Inc. for Lease of Property at 2101 West Turner Road

MEETING DATE: November 6, 1996

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council authorize the City Manager to execute the attached lease agreement with McCaw Communications of Stockton, Inc. for the purpose of installing an antenna and a small equipment building on City property.

BACKGROUND INFORMATION: In May of this year, the Parks and Recreation Director, Ron Williamson, was contacted by AT&T Wireless Service. They wanted to install a 60- to 80-foot antenna, similar to the one installed last year at the Municipal Service Center (MSC), on the Lodi Lake property. Mr. Williamson and I reviewed the request in the field with AT&T Wireless Service and determined it was not in the City's best interest to have that type of facility on the Lodi Lake property. We then looked at the Well 7 property, west of Lodi Lake and adjacent to McLane Substation. Attached as Exhibit 1 is a general vicinity map and Exhibit 2 shows a larger blowup of this Well 7 site. Because of the triangular configuration of this site, it was determined that we had no use for the northerly 50 feet, and, because of the type of land use in the area, this would be a good location for such an antenna. Exhibit 3 shows the antenna superimposed on a picture of the proposed site taken from Turner Road.

The following departments and agencies have been contacted and indicated there will be no problem with this proposed installation:

Electric Utility Department - Contacted because of the proximity of the proposed antenna to the McLane Substation, which is located immediately to the west.

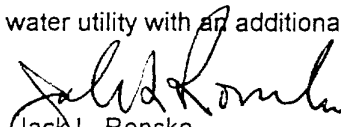
Community Development Department - Contacted to confirm that this type of use would not be a problem in this area. The antenna will actually be on City property; however, it is surrounded on the west and the south by industrial property and is bordered on the north and west by railroad tracks.

NCPA - Contacted to ensure they would have no problem with this type of facility conflicting with their generation facility which is located immediately west of McLane Substation.

The antenna and the subject agreement is essentially identical to the antenna and agreement used for the site at the MSC. The rent of \$650 per month is also the same as our lease at the MSC; however, the square footage of the parcel is only 930 square feet versus 1,200 square feet at the MSC. The rent is tied to the Consumer Price Index for future adjustments. The tenant will obtain all required permits and pay all costs involved in the development of the site.

The City Attorney has reviewed and approved the attached agreement as to form.

FUNDING: Not applicable. This will provide the City's water utility with an additional revenue of \$7,800 per year.


Jack L. Ronsko
Public Works Director

Attachments

cc: City Attorney
Community Development Director
Water/Wastewater Superintendent

Electric Utility Director
Finance Director
AT&T Wireless Service - John Speer

APPROVED:


H. Dixon Flynn -- City Manager

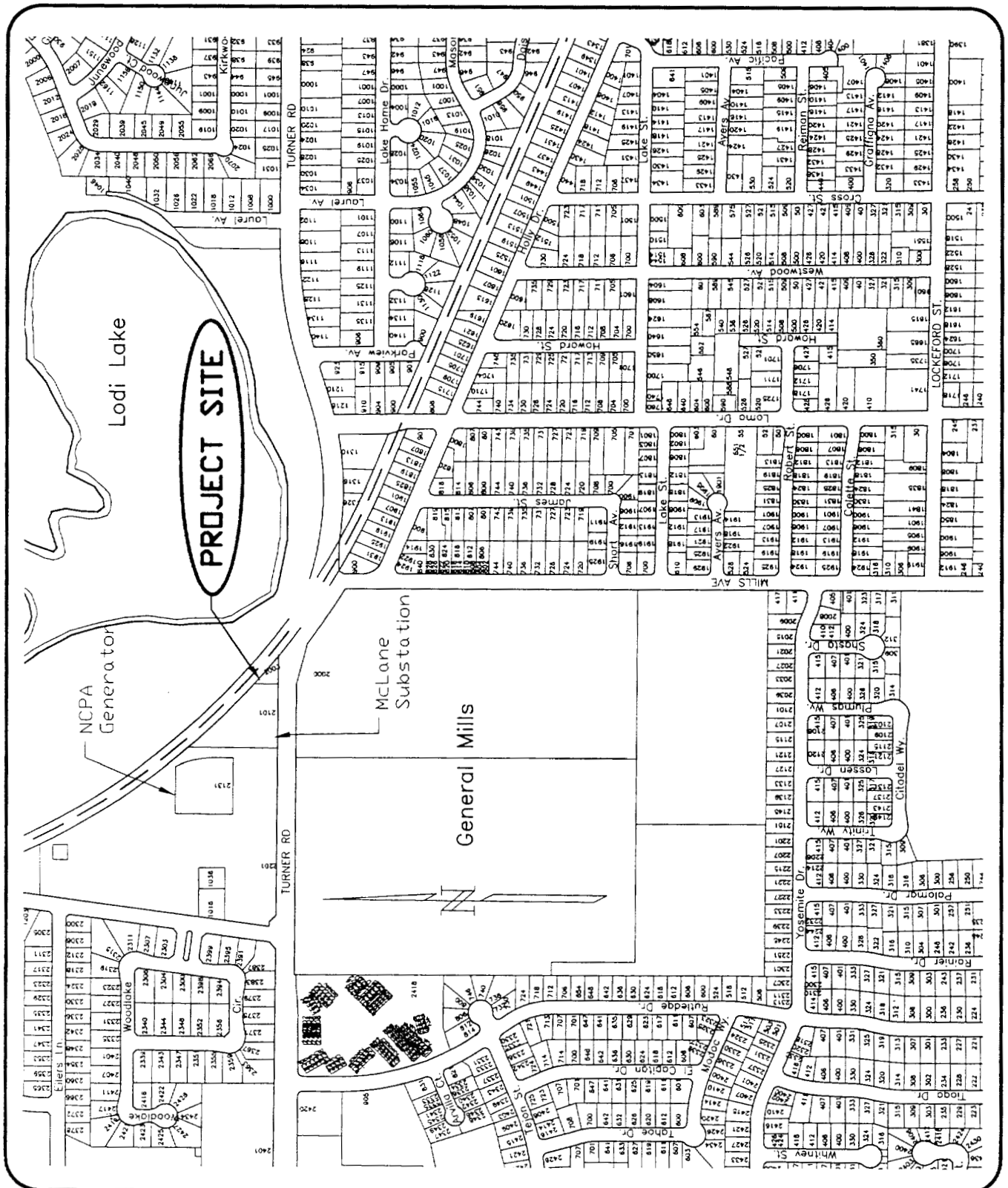


EXHIBIT "B"

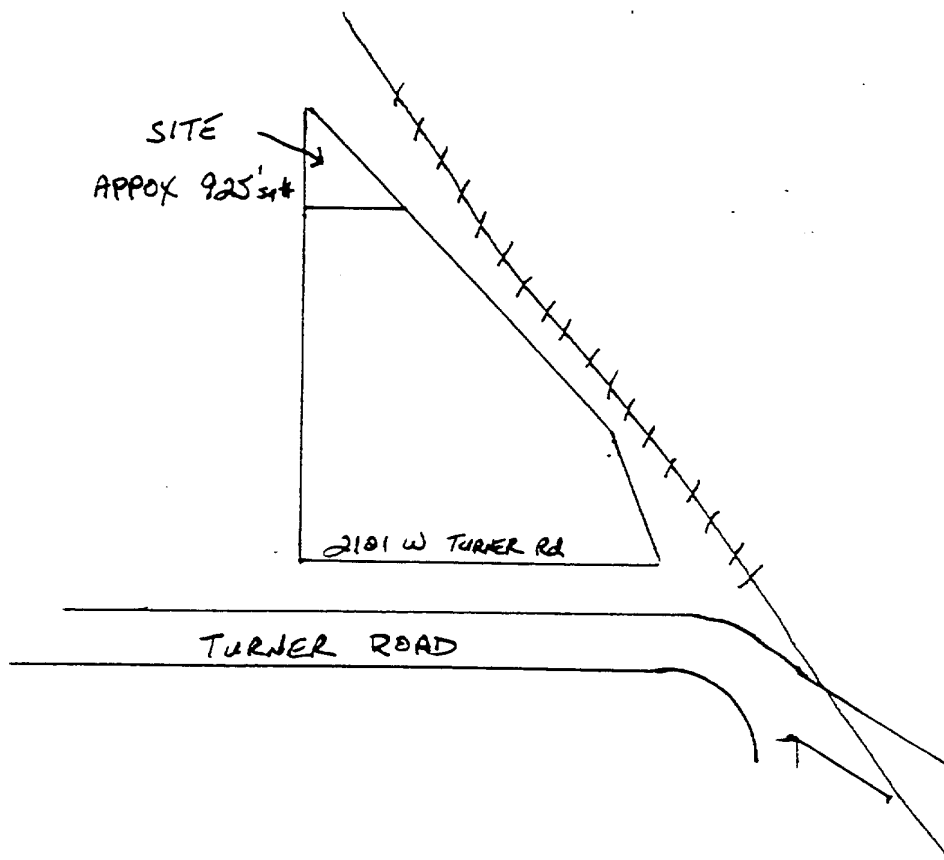
LEGAL DESCRIPTION OF PREMISES

Exhibit "B" to the Agreement dated September __, 1996 by and between City of Lodi ("Landlord") and McCaw Communications of Stockton, Inc. ("Tenant").

The location of the Premises within the Property is more particularly described or depicted as follows:

A land survey will replace this Exhibit "B" upon receipt thereof by Tenant pursuant to Section 1 of the Agreement.

INITIALS





State: California
Market: Stockton
Cell ID: CSCST.CS97012
Name: Turner

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT (this "Agreement") is entered into this __ day of _____, 1996 between City of Lodi ("Landlord") and McCaw Communications of Stockton, Inc. ("Tenant").

For this Option Tenant shall pay to Landlord an option fee in the amount of Nine Hundred Dollars (\$900.00) within fifteen (15) working days after full execution of this Agreement.

1. Premises. Subject to the following terms and conditions, Landlord grants to Tenant an option (the "Site Lease") to lease a portion (the "Premises") of the real property (the "Property") described in Exhibit A attached hereto and incorporated herein by this reference. The Premises, located at 2101 W. Turner Road, Lodi, CA are comprised of 924 square feet and are situated within the Property as described and/or depicted in Exhibit B attached hereto and incorporated herein by this reference.

2. Cooperation. During the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining and maintaining, at Tenant's sole expense, all licenses and permits required for Tenant's use of the Premises (the "Governmental Approvals") and Landlord agrees to allow Tenant to perform surveys, soils testing, and other engineering procedures on, under, and over the Property necessary to determine that the Premises will be acceptable to Tenant's engineering specifications, system design, and Governmental Approvals.

3. Lease Term. The term of this lease (this "Lease") shall be five (5) years, commencing upon the date Tenant gives written notice to Landlord that Tenant has received all necessary licenses and permits required for Tenant's use on the Premises or eighteen (18) months after effective date stated above, whichever is sooner ("the Commencement Date"), and terminating at midnight on the last day of the month in which the fifth annual anniversary of the Commencement Date shall have occurred. Tenant shall have the right to extend this Lease for five (5) additional five (5) year terms ("Renewal Terms"). Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be renewed for each successive Renewal Term unless Tenant shall notify Landlord of Tenant's intention not to renew this Lease at least ten (10) days prior to the expiration of the term or any Renewal Term.

4. Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals in any and all frequencies, for the construction and maintenance of related facilities, towers, antennas, or buildings and for related activities. The cellular tower (monopole) shall not exceed eighty (80') above ground level, and the parties agree that interconnect shall be buried Telco line, and not by microwave dishes.

5. RENT.

a. Upon the Commencement Date, Tenant shall pay Landlord, as rent, the sum of Six Hundred Fifty Dollars (\$650.00) per month ("Rent"). Rent shall be payable on the first day of each month in advance to City of Lodi at Landlord's address specified in Paragraph 14 below. If the Lease is commenced other than on the first day of a month, the Rent shall be prorated for that first month for the number of days from the Commencement Date to the end of the month.

b. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination, and, in the event of termination for any reason other than nonpayment of Rent, all prepaid Rents shall be refunded to Tenant.

c. Rent shall be increased as of the term anniversary of the Commencement Date ("Adjustment Date") by a percentage equal to the percentage increase in the Consumer Price Index ("CPI") for the San Francisco Metropolitan Statistical Area on the Adjustment Date over the CPI for the month in which the Commencement Date or the last Adjustment Date, as the case may be, occurred. However, Rent shall not be increased more than Twenty-Five percent (25%) of the rent for the previous term. Rent shall not be decreased below the Rent for the previous term. Landlord shall be responsible for communicating the amount of the rental adjustment to Tenant and shall provide Tenant with supporting data upon which the adjustment is calculated.

d. As additional consideration, Tenant agrees to give to Landlord three (3) cellular telephones, at no cost to Landlord, not to exceed Five Hundred Dollars (\$500.00) in cost, upon execution of Lease. Landlord is responsible for any installation fee and all customary service charges connected with the use of said cellular telephone, including but not limited to activation, access, air time, long distance and toll charges.

6. Interference. Landlord shall not use, nor shall Landlord permit its employees, tenants, licensees, invitees or agents to use any portion of Landlord's properties in any way which interferes with the physical operations of Tenant. Such interference shall be deemed a material breach by Landlord, and Landlord shall have the responsibility to terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Tenant, and therefore Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to elect to enjoin such interference or to terminate this Lease, upon notice to Landlord.

7. Improvements: Utilities: Access.

a. Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities, including without limitation an antenna tower and base, radio transmitting and receiving antennas, and an electronic equipment and building collectively the "Antenna Facilities"). The Antenna Facilities shall remain the exclusive property of Tenant, and Tenant shall have the right to remove all or any portion of the Antenna Facilities during the term and following any termination of this Lease.

b. Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to the installation of emergency power generators). Tenant shall have the right to permanently place utilities on (or to bring utilities across) the Property in order to service the Premises and the Antenna Facilities. Landlord shall have the right to relocate at Tenant's expense such utility easements in the event Landlord undertakes new development that required relocation of utility service to Tenants leased area.

c. Landlord shall provide Tenant ingress, egress, and access from an open and improved public road to the Premises adequate to service the Premises and the Antenna Facilities at all times during the term of this Lease or any renewal thereof at no additional charge to Tenant. Landlord shall execute an easement evidencing this right upon Tenant's request. Landlord shall have the right to relocate Tenant's access in the event Landlord undertakes new development that requires relocation of Tenant's access.

8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability, on thirty (30) days written notice as follows: (a) by either party upon a default of any covenant or term hereof by the other party, which is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof); (b) by Tenant if it is unable to obtain or maintain any license, permit or other Governmental Approval necessary to the construction and/or operation of the Antenna Facilities or Tenant's business; or (c) by Tenant if the Premises are or become unacceptable

under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong. Upon termination, Tenant will return the Premises to its original condition, normal wear and tear and casualty excepted. However, Tenant will not be responsible for the replacement of any trees, vegetation and/or shrubs or for the reduction of any foundation to a depth greater than one foot below grade.

9. Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities. Landlord shall pay when due all real property taxes, possessory interest taxes and all other fees and assessments attributable to the Property. However, Tenant shall pay, as additional Rent, any increase in real property taxes levied against the Premises which is directly attributable to Tenant's use of the Premises, and Landlord agrees to furnish proof of such increase to Tenant.

10. Insurance.

a. Tenant will provide Commercial Liability Insurance in an aggregate amount of \$1,000,000.00 and name Landlord as an additional insured on the policy or policies. Tenant may satisfy this requirement by obtaining appropriate endorsement to any umbrella policy of liability insurance Tenant may maintain.

b. Landlord and Tenant agree that in the event of loss or damage to property due to any peril which is covered by an insurance policy maintained by either of the parties, the parties shall look solely to such insurance for recovery, and provided that the loss is covered by the insurance policy, neither party shall be liable to the other. In the event of such an insured loss, neither party's insurance company shall have a subrogated claim against the other party. Prior to commencement of the Lease, each party shall provide to the other proof, whether by copy of the policy or endorsement, that it has obtained the waiver of subrogation provided by this paragraph.

11. Destruction of Property. If the Property or the Premises are destroyed or damaged so as, in Tenant's judgment, to hinder the effective use of the Antenna Facilities, Tenant may elect to terminate this Lease as of the date of the damage or destruction by so notifying Landlord not more than forty-five (45) days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant.

12. Condemnation. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's determination to render the Premises unsuitable for the use which Tenant was then making of the Premises, this Lease shall terminate as of the date the title vests in the condemning authority. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property (which for Tenant shall include, where applicable, the value of its Antenna Facilities, moving expenses, prepaid Rent and business dislocation expenses). Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power, shall be treated as a taking by condemnation.

13. Indemnity and Hold Harmless. Tenant agrees to indemnify and hold Landlord harmless from any and all claims arising from the installation, use, maintenance, repair or removal of Tenant's Antenna Facilities, except to the extent such claims arise from the negligent or intentional acts or omissions of Landlord, its agents or independent contractors.

14. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Landlord, to: City of Lodi
 P. O. Box 3006
 221 W. Pine
 Lodi, CA 95241-1910
 Attn: H. Dixon Flynn, City Manager

If to Tenant, to: AT&T Wireless Services
Legal Department
10000 Goethe Road
Sacramento, California 95827
Attention: Shared Property Analyst

In addition, a copy of any notice alleging a breach of this Agreement by Tenant shall also be sent to:

AT&T Wireless Services
5400 Carillon Point
Kirkland, Washington 98033
Attention: Legal Department

15. Title and Quiet Enjoyment.

a. Landlord warrants that it (i) has full right, power and authority to execute this Agreement; and (ii) has good and unencumbered title to the Property free and clear of any liens or mortgages, except as set forth in Exhibit C attached hereto. Landlord further warrants that Tenant shall have the quiet enjoyment of the Premises during the term of this Lease or any renewal thereof.

b. Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Tenant, such title report shows any defects of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises or Tenant's ability to obtain leasehold financing, Tenant shall have the right to cancel this Lease immediately upon written notice to Landlord.

c. Tenant shall also have the right to have the Property surveyed, and, in the event that any defects are shown by the survey which, in the opinion of Tenant, may adversely affect Tenant's use of the Premises or Tenant's ability to obtain leasehold financing, Tenant shall have the right to terminate this Lease immediately upon written notice to Landlord.

d. Landlord represents and warrants to Tenant that to the best of Landlord's knowledge hazardous substances have not been generated, stored or disposed of on the Premises nor have the same been transported to or over the Premises. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Landlord will hold Tenant harmless from and indemnify Tenant against and from any damage, loss, expenses or liability resulting from any breach of this representation and warranty including all attorneys' fees and costs incurred as a result thereof.

16. Assignment. Tenant may assign or sublet this Lease upon notice to Landlord. Any sublease that is entered into by Tenant shall be subject to the provisions of this Lease. Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any such mortgagees or holders of security interests including their successor or assigns (hereinafter collectively referred to as "Mortgagees"). In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant except that the cure period for any Mortgagee shall not be less than ten (10) days after receipt of the default notice.

17. Successors and Assigns. This Lease shall run with the Property described in Exhibit A. This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

18. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof which shall be deemed personal property for the purposes of this Lease, regardless of whether or not same is deemed real or personal property under applicable laws, and Landlord gives Tenant the right to remove all or any portion of same from time to time in Tenant's sole discretion and without Landlord's consent.

19. Miscellaneous.

a. The substantially prevailing party in any litigation or other proceeding arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including those associated with appeals, if any.

b. Each party agrees to furnish to the other such truthful estoppel information as the other may reasonably request.

c. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

d. If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

e. Landlord agrees to cooperate with Tenant in executing any documents (including but not limited to a Memorandum of Lease Agreement and Nondisturbance and Attornment Agreement) necessary to protect Tenant's rights hereunder or Tenant's use of the Premises. Landlord acknowledges that a Memorandum of the Agreement will be recorded in the Official Records of the County where the Property is located. Upon the expiration or earlier termination of this Agreement, Tenant agrees to record a quitclaim deed to evidence the termination of Tenant's interest in the Property.

f. This Lease shall be construed in accordance with the laws of the state in which the Property is located.


g. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

DATED as of the date first set forth above.

LANDLORD: City of Lodi

By: H. Dixon Flynn
Its: City Manager
Tax I.D.# 94-6000361

By: Jennifer M. Perrin
Its: City Clerk



By: Randall A. Hays
Its: City Attorney

TENANT: McCaw Communications of Stockton, Inc.

By: Patrick Poling
Its: System Development Manager

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 1996 before me, _____, Notary Public, personally appeared

☐ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY)

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 1996 before me, _____, Notary Public, personally appeared

☐ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY)

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 1996 before me, _____, Notary Public, personally appeared

☐ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY)

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 1996 before me, _____, Notary Public, personally appeared

☐ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

On August __, 1996 before me, V. Chris Poff, Notary Public, personally appeared **Patrick Poling**

☐ personally known to me

- OR -

☐ proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

Title Type of Document: Site Lease Agreement

Number of Pages: _____ Date of Document: _____

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Exhibit "A" to the Agreement dated August __, 1996 by and between City of Lodi ("Landlord") and McCaw Communications of Stockton, Inc. ("Tenant").

The Property is legally described as follows:

APN: 015-23-13

Site Address: 2101 W. Turner Road, Lodi, CA

Book: Page Number:

Documentation: Date:

County: San Joaquin

State: California

INITIALS

EXHIBIT "B"

LEGAL DESCRIPTION OF PREMISES

Exhibit "B" to the Agreement dated September __, 1996 by and between City of Lodi ("Landlord") and McCaw Communications of Stockton, Inc. ("Tenant").

The location of the Premises within the Property is more particularly described or depicted as follows:

A land survey will replace this Exhibit "B" upon receipt thereof by Tenant pursuant to Section 1 of the Agreement.

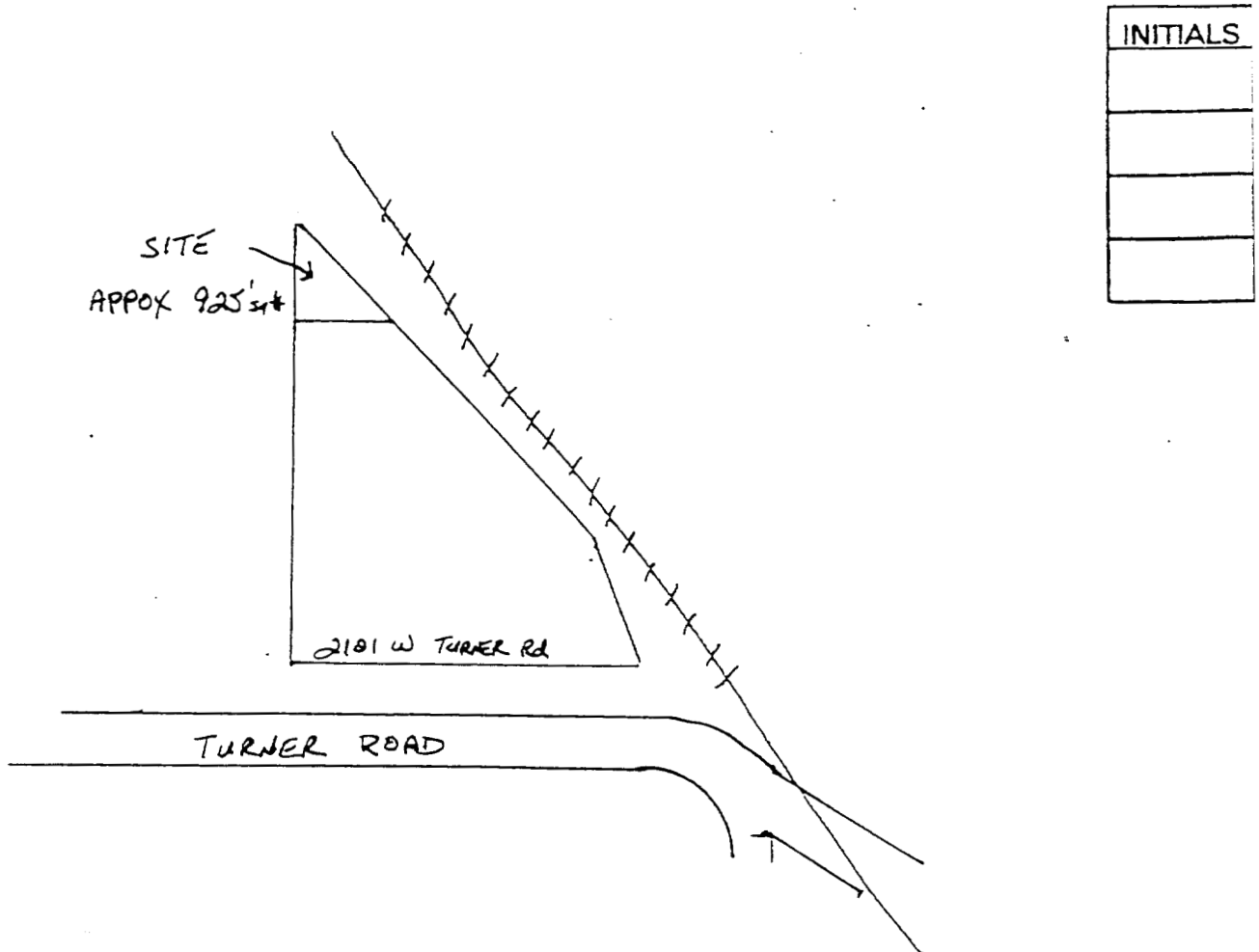


EXHIBIT "C"

LEGAL DESCRIPTION OF PREMISES

Exhibit "B" to the Agreement dated August __, 1996 by and between City of Lodi ("Landlord") and McCaw Communications of Stockton, Inc. ("Tenant").

The following is a list of ground leases, liens, mortgages and other encumbrances currently on the Property as of the Effective Date.

None

INITIALS



MEMORANDUM, City of Lodi, Public Works Department

To: City Manager
City Council

From: Public Works Director

Date: November 6, 1996

Subject: Consent Calendar Item E., 23.
Agreement with McCaw Communications of Stockton, Inc. for
Lease of Property at 2101 West Turner Road

After the last Shirtsleeve Session, at which time we discussed this item, and after listening to cassette tapes from the last annual League meeting on the future of telecommunications, I initiated additional negotiations with AT&T Wireless Service. The purpose of the negotiations was to ensure that AT&T had a nonexclusive right to use the site; i.e., if other communication service firms want an antenna in this immediate area, they would be required to go on the proposed antenna and pay both AT&T and City of Lodi for the use of the facility. This would limit the number of antennas in the area.

I also indicated that the City would want an additional \$50 per month for the use of this fenced and developed site.

AT&T Wireless Service has agreed to the increase in monthly rental and we are currently working on rewording the agreement to provide for nonexclusive use of the site. It is, therefore, recommended that the City Council approve the agreement with McCaw Communications and authorize the City Manager to execute the lease agreement once we have agreed on the rewording and AT&T provides us with a revised agreement noting the appropriate rewording and the increased rent.

A handwritten signature in dark ink, appearing to read "Jack L. Ronsko", is written over a horizontal line.

Jack L. Ronsko
Public Works Director

JLR/lm

cc: City Attorney
Community Development Director
Water/Wastewater Superintendent
Electric Utility Director
Finance Director